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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of	)	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY
	)	
Promotion of Competitive Networks	)	WT Docket No. 99-217
in Local Telecommunications Markets	)	
	)	
Wireless Communications Association	)	
International, Inc. Petition for Rulemaking to	)	
Amend Section 1.4000 of the Commission's Rules	)	
to Preempt Restrictions on Subscriber Premises	)	
Reception or Transmission Antennas Designed	)	
to Provide Fixed Wireless Services	)	
	)	
Cellular Telecommunications Industry	)	
Association Petition for Rule Making and	)	
Amendment of the Commission's Rules	)	
to Preempt State and Local Imposition of	)	
Discriminatory And/Or Excessive Taxes	)	
and Assessments	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	

**REPLY COMMENTS OF BLUESTAR COMMUNICATIONS, INC.**

Patrick Donovan  
Kathleen L. Greenan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Telephone: (202) 945-6986  
Facsimile: (202) 424-7645

Counsel for BlueStar Communications, Inc.

September 27, 1999

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**REPLY COMMENTS OF BLUETAR COMMUNICATIONS, INC.**

BlueStar Communications, Inc. ("BlueStar") supports the overwhelming majority of parties that recommend modification of the Commission's inside wiring rules to require relocation of the demarcation point to the minimum point of entry ("MPOE") in all multiple tenant environments ("MTEs"). Requiring relocation of the MPOE and affirming the property owner's right to control intra-building facilities will curb unreasonable and anticompetitive practices of incumbent local exchange carriers ("ILECs") that prevent access to MTE wiring by competitors.

**I. THE COMMISSION SHOULD REQUIRE RELOCATION OF THE DEMARCATION POINT TO THE MINIMUM POINT OF ENTRY IN ALL BUILDINGS**

Access to intra-building wiring is critical if competitive local exchange carriers ("CLECs") are to reach customers in MTE properties. Unfortunately, many MTE networks are configured with multiple demarcation points, despite the Commission's previous conclusion that the most effective method for ensuring competitive access to [MTEs] was to modify its rules to promote the relocation of the demarcation point to the MPOE.<sup>1/</sup> The comments in this proceeding demonstrate that most MTEs do not have a demarcation point at the MPOE. Instead, these buildings continue to have mystery intra-building configurations.

CLECs trying to gain entry into an MTE building are unable to determine the location of the demarcation point or whether there is more than one point. Moreover, CLECs cannot even determine ownership of the intra-building wiring and, therefore, cannot ascertain the appropriate entity for negotiations. Often times, the CLEC will approach an entity, negotiate, attempt to use the intra-building wiring, only to find that another entity claims ownership and refuses access. Placement of the demarcation point in all MTEs at the MPOE would reduce the costs and delay of identifying ownership of intra-building wiring since the wiring would always be non-ILEC controlled.

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<sup>1/</sup> Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, 5 FCC Rcd 4686, 4692 (1990), *stay denied*, Order, 5 FCC Rcd 5228 (CCB 1990).

In its comments, BellSouth describes its long standing, nondiscriminatory policy and practice of locating the demarcation point “where specified by the property owners and end users, which is typically at the end-user’s premises.”<sup>2/</sup> Cincinnati Bell also admits it has a practice of placing the demarcation point at the premise of the tenant rather than adopting a MPOE.<sup>3/</sup> When Cincinnati Bell installs intra-building facilities, the riser cable remains on the regulated books of the Company as part of the local loop.<sup>4/</sup> However, Cincinnati Bell claims to neither own nor control the conduit or other riser facilities provided to extend the riser cable from the point of entry to the demarcation point of the tenant’s location.<sup>5/</sup> Cincinnati Bell claims to simply make use of the conduit or other riser facilities.<sup>6/</sup> After examining the comments submitted by BellSouth, Cincinnati Bell, and other incumbent carriers, it is not surprising that MTE buildings present an insurmountable challenge for CLECs. Each building presents a confusing, complicated network with no clear indication of who is responsible or has the authority to authorize use of the intra-building facilities.

The comments demonstrate that modification of the demarcation point rules is necessary to make CLEC competition in the MTE environment a reality. The majority of commenters support

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<sup>2/</sup> Comments of BellSouth Corporation at 7.

<sup>3/</sup> Comments of Cincinnati Bell Telephone Company at 2.

<sup>4/</sup> *Id.* at 3.

<sup>5/</sup> *Id.*

<sup>6/</sup> *Id.*

modification of the Commission's current inside wiring rules to require relocation of the demarcation points to the MPOE in *all* MTEs, regardless of when the building was initially wired.<sup>7/</sup>

BlueStar supports the trigger events set forth by GTE. The following three events would trigger relocation of the demarcation point to the MPOE: (1) The building owner or customer requests the relocation; (2) The building owner or customer requires major additions, modifications, and/or rearrangements of network outside plant facilities; (3) A telecommunications carrier requests use of the wiring with the building owner's permission.<sup>8/</sup> Once the demarcation point is located at the MPOE, all intra-building wiring will be controlled by and the responsibility of the building owner. Thus, a competitive carrier will have a clear understanding of the location of the demarcation point and the entity responsible for negotiating access to the wiring, which will facilitate entry into the building. The Commission should provide that the ILEC can continue to recover the cost of wiring in the MTE found on the carriers side of demarcation point as it previously ordered with simple inside wiring.<sup>9/</sup>

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<sup>7/</sup> E.g., Comments of AT&T at 36; Comments of CAIS at 9; Comments of First Regional at 9; Comments of Fixed Wireless Communications Coalition at 14; Comments of OPTTEL at 5; Comments of Personal Communications Industry Association 32; Comments of Sprint at 21; Comments of Teligent at 79; Comments of WinStar at 65.

<sup>8/</sup> Comments of GTE Service Corporation at 9.

<sup>9/</sup> Inside Wiring Detariffing Order, CC Docket 79-105, 51 Fed. Reg. 8498 (1986), *recon. in part*, Inside Wiring Reconsideration Order, 1 FCC Rcd 1190, *further recon.* 3 FCC Rcd 1719 (1988), *remanded*, NARUC v. FCC, 880 F.2d 1989.

Building owners and managers also support locating the demarcation point at the MPOE and vesting control over intra-building facilities with the building owner.<sup>10/</sup> The Cooperative Housing Coalition states that MPOE rules applicable to all types of wiring would assist the community in determining more effectively when the shift in duties and responsibilities occurs. BlueStar supports the recommendation that the demarcation point rules apply to all types of inside wiring, not just voice grade copper cable.<sup>11/</sup> With the onset of integrated communications services, the Coalition is concerned that “it will be difficult to determine which set of demarcation rules should apply to any particular service offered by a certain carriers.”<sup>12/</sup> Applying the same rules to all intra-building facilities will alleviate this concern and promote the provision of advanced services to MTEs.

If the Commission fails to require relocation of the demarcation point, BlueStar supports Global Crossing’s suggestion to require ILECs to provide competitive providers with a list of buildings in which they own house and riser cables.<sup>13/</sup> BlueStar confirms Global Crossing’s claim that it is extremely difficult for competitive providers to determine who owns the wiring in any given

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<sup>10/</sup> Comments of Cooperative Housing Coalition at 42; Cornerstone Properties, Crescent Real Estate, Duke Weeks Realty, Hines Interests Limited Partnership, Legacy Partners, The Luri Company, Metropolitan Life Insurance Company, Prentiss Properties, Rudein Management Company, Shorenstein Company, Spicker Properties, Trizechanh Office Properties (“Joint Property Owners”) at 30.

<sup>11/</sup> Comments of Joint Property Owners at 32.

<sup>12/</sup> Comments of Cooperative Housing Coalition at 41.

<sup>13/</sup> Comments of Global Crossing Ltd. at 8.

building.<sup>14/</sup> BlueStar also recommends that the Commission require ILECs to make available as a network element that portion of the ILEC network from the MTE entrance facilities to the demarcation point and, separately, direct interface with the NID pursuant to 251(c)(3).<sup>15/</sup> However, as noted by the Independent Cable & Telecommunications Association, because MTE networks often are configured with multiple demarcation points, simply unbundling the intra-building wiring will not, alone, make practical access to customers in MTEs available.<sup>16/</sup> In order to make interconnection with intra-building distribution facilities practical, carriers must have access to a single point of interconnection at or near the property line of any MTE.

**II. FOR THE MPOE TO BE EFFECTIVE, THE COMMISSION SHOULD CLARIFY THAT THE PROPERTY OWNER OWNS AND CONTROLS ALL INTRA-BUILDING FACILITIES ON THE CUSTOMER SIDE OF THE DEMARCATION**

Building owners and managers filed comments in the proceeding overwhelmingly in support of removing ILEC control and allowing building owner control over intra-building facilities. BlueStar agrees with CoServ Broadband's argument that it is in the public interest for the building owner, rather than the local exchange carrier, to be considered the owner of the inside wiring.<sup>17/</sup> BellSouth's claim that building owners rarely insist upon MPOE demarcation and generally do not

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<sup>14/</sup> *Id.*

<sup>15/</sup> Comments of BlueStar Communications, Inc. at 6.

<sup>16/</sup> Comments of Independent Cable & Telecommunications Association at 7.

<sup>17/</sup> Comments of Dallas Wireless Broadband, L.P., dba CoServ Broadband at 7.



want responsibility for inside wiring is not supported by the record.<sup>18/</sup> Joint Property Owners stated that in those states where the ILEC has not made it a standard practice to establish the demarcation point at the MPOE, it is virtually impossible for the building owner to do so under the rules. Attempts by property owners to declare MPOE in 33 specific buildings in 13 different states, with 7 different ILECs, failed. The ILECs rebuffed the property owners each time.<sup>19/</sup> Such ILEC actions violate the Commission's demarcation rules which specifically provide that "[i]f the telephone company does not elect to establish a practice of [MPOE], the multi-unit premises owner shall determine the location of the demarcation point or points."<sup>20/</sup> Thus, if the ILEC practice is not to place the demarcation at the MPOE, the property owner has the right to dictate the location of the demarcation. In the examples cited by the property owners, the ILECs did not have MPOE practices and yet they denied the property owner the right to designation demarcation at the MPOE.

According to several property owners, ILECs create a barrier to local competition in MTEs by using their market power to demand special treatment. ILECs demand access to the building, but refuse to sign agreements with building owners, pay license fees, or otherwise accept the terms and conditions the building owner has set for access. ILECs often threatening to withhold service from the tenants unless the property owner agrees to the ILECs terms.<sup>21/</sup> Property owners claim they have

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<sup>18/</sup> *Id.* at 8.

<sup>19/</sup> Comments of Joint Property Owners at 32.

<sup>20/</sup> 47 C.F.R. §68.3(b)2.

<sup>21/</sup> Comments of Joint Property Owners at 13.

no alternative but to accept ILEC terms for access. ILEC possession of market power enables the ILEC to continue monopolistic tactics in MTEs. ILECs gain an unfair competitive advantage by forcing property owners to give special treatment to the ILEC. Apex Site Management commented that ILECs currently enjoy an economic advantage over the CLECs because their occupancy is free and not subject to written agreement.<sup>22/</sup> Arden Reality expressed frustration that neither Congress nor the courts have yet abrogated generally the ILEC's hundred year old agreements granting ILECs this access.<sup>23/</sup>

Providing that building owners have control over intra-building facilities will curb these ILEC abuses. To date, property owner attempts to negotiate MPOE and other terms of building access have failed due to overwhelming ILEC leverage. In order to truly confront the ILECs and suppress their anticompetitive tactics, the Commission should require relocation of the MPOE and clarify property owners' right to control inside wiring. BlueStar fully supports the recommendation that the Commission require ILECs to operate in MTEs under the same terms and conditions as their competitors.<sup>24/</sup>

The most effective method of eliminating ILEC actions to restrict competitive entry is to require that the demarcation point in all MTEs be located at the MPOE and to permit a CLEC to interface with the intra-building network at that point. Once the demarcation point is established at

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<sup>22/</sup> Comments of Apex Site Management, Inc. at 8.

<sup>23/</sup> Comments at Arden Reality, Inc. at 5.

<sup>24/</sup> Comments of Apex Site Management, Inc. at 8; Joint Property Owners at 15.

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the MPOE, the ILECs should be prohibited from exercising any rights of ownership with respect to wiring installed in the MTE. No unjust taking of ILEC property would occur since costs not depreciated can be recovered in regulated rates.

### III. CONCLUSION

The intent of the Commission's inside wiring rules was to ensure competitive carrier access to inside wiring by providing control over that wiring to the property owner. The ILECs have circumvented these rules; thereby preventing CLEC access to MTE consumers. BlueStar urges the Commission to adopt the recommendations above to promote competitive MTE access and to ensure MTE consumers the benefits of the Telecommunications Act of 1996.

Respectfully submitted,



Patrick J. Donovan  
Kathleen L. Greenan  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Telephone: (202) 424-7500  
Facsimile: (202) 424-7645

Counsel for BLUESTAR COMMUNICATIONS, INC.

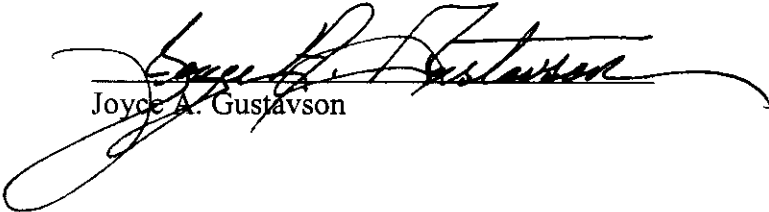
September 27, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was hand delivered this 27<sup>th</sup> day of September, 1999, to the following:

Magalie Roman Salas, Secretary (Orig. + 6)  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
TW-A325  
Washington, D.C. 20554

International Transcription Services, Inc.  
445 Twelfth Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

  
Joyce A. Gustavson